

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

BENNY LAVERN COLLINS	§	
VS.	§	CIVIL ACTION NO. 1:20-CV-470
UNITED STATES PENITENTIARY	§	

MEMORANDUM OPINION AND ORDER
PARTIALLY ADOPTING REPORT AND RECOMMENDATION

Plaintiff, Benny Lavern Collins, an inmate confined at USP Florence, proceeding *pro se*, filed this civil rights action pursuant to 42 U.S.C. § 1983 against the defendant USP Beaumont.

The court referred this matter to the Honorable Keith Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The Magistrate Judge recommends this action be dismissed without prejudice for want of prosecution pursuant to Federal Rule of Civil Procedure 41(b) as plaintiff failed to pay the initial partial filing fee (docket entry no. 22).

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such order, along with the records, and pleadings. Plaintiff filed objections to the Report and Recommendation of United States Magistrate Judge (docket entry no. 24). This requires a *de novo* review of the objections in relation to the pleadings and applicable law. *See* FED. R. CIV. P. 72(b).

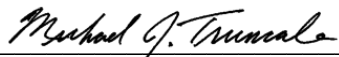
Plaintiff complains he should not have to pay the initial partial filing fee as it was not his intent to file a civil action. Plaintiff states, and the docket reveals, that this case was transferred from the Northern District of Texas. A review of the docket reveals that the Northern District liberally construed correspondence from plaintiff to that court as a new civil action and transferred the civil action to the Eastern District of Texas, Beaumont Division. Plaintiff states it was not his intent to file a new civil action as he knows he has to exhaust his administrative remedies before filing a civil

action. This court liberally construes plaintiff's objections as a Motion to Voluntarily Dismiss pursuant to Federal Rule of Civil Procedure 41(a).

ORDER

Accordingly, plaintiff's objections are **SUSTAINED**. The findings of fact and conclusions of law of the Magistrate Judge are correct, and the report of the Magistrate Judge is **PARTIALLY ADOPTED** to the extent it recommends dismissal. A Final Judgment will be entered in accordance with the recommendations of the Magistrate Judge.

SIGNED this 26th day of April, 2021.



Michael J. Truncala
United States District Judge